

after June 28, 2002, except that the provisions of paragraph (e)(2) apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

(2) *Prior law.* For taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is on or before June 28, 2002, see § 1.1502-78 in effect prior to June 28, 2002, as contained in 26 CFR part 1 revised April 1, 2002.

[T.D. 6894, 31 FR 11794, Sept. 3, 1966, as amended by T.D. 7059, 35 FR 14546, Sept. 17, 1970; T.D. 7246, 38 FR 767, Jan. 4, 1973; T.D. 8387, 56 FR 67489, Dec. 31, 1991; T.D. 8446, 57 FR 53034, Nov. 6, 1992; T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999; T.D. 8950, 66 FR 33463, June 22, 2001; T.D. 9002, 67 FR 43544, June 28, 2002; 67 FR 77678, Dec. 19, 2002]

§ 1.1502-79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For losses arising in consolidated return years beginning before January 1, 1997, see § 1.1502-79A(a). For later years, see § 1.1502-21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For losses arising in consolidated return years beginning before January 1, 1997, see § 1.1502-79A(b). For later years, see § 1.1502-22(b).

(c) *Carryover and carryback of consolidated unused investment credit to separate return years—(1) In general.* If a consolidated unused investment credit can be carried under the principles of section 46(b) and paragraph (b) of § 1.1502-3 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such unused credit arose, then the portion of such consolidated unused credit attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1)

and (2), as appropriate) and shall be an investment credit carryover or carryback to such separate return year.

(2) *Portion of consolidated unused investment credit attributable to a member—*

(i) *Investment credit carryback.* In the case of a consolidated unused credit which is an investment credit carryback, the portion of such consolidated unused credit attributable to a member of the group is an amount equal to such consolidated unused credit multiplied by a fraction, the numerator of which is the credit earned of such member for the consolidated unused credit year, and the denominator of which is the consolidated credit earned for such unused credit year.

(ii) *Investment credit carryover.* In the case of a consolidated unused credit which is an investment credit carryover, the portion of such consolidated unused credit attributable to a member of the group is an amount equal to such consolidated unused credit multiplied by a fraction, the numerator of which is the credit earned with respect to any section 38 property placed in service in the consolidated unused credit year and owned by such member (whether or not placed in service by such member) at the close of the last day as of which the taxable income of such member is included in a consolidated return filed by the group, and the denominator of which is the consolidated credit earned for such unused credit year.

(d) *Carryover and carryback of consolidated unused foreign tax—(1) In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(d) and paragraph (e) of § 1.1502-4 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such unused foreign tax arose, then the portion of such consolidated unused foreign tax attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1) and (2), as appropriate) and

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shall be deemed paid or accrued in such separate return year to the extent provided in section 904(d).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member of a group is an amount equal to such consolidated unused foreign tax multiplied by a fraction, the numerator of which is the foreign taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each foreign country or possession (or to all foreign countries or possessions if the overall limitation is effective) by such member, and the denominator of which is the aggregate of all such taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each such foreign country or possession (or to all foreign countries or possessions if the overall limitation is effective) by all the members of the group.

(e) *Carryover of consolidated excess charitable contributions to separate return years*—(1) *In general.* If the consolidated excess charitable contributions for any taxable year can be carried under the principles of section 170(b)(2) and paragraph (b) of § 1.1502-24 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such excess contributions arose, then the portion of such consolidated excess charitable contributions attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1) and (2), as appropriate) and shall be a charitable contribution carryover to such separate return year.

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions attributable to a member of a group is an amount equal to such consolidated excess contributions multiplied by a fraction, the numerator of which is the

charitable contributions paid by such member for the taxable year, and the denominator of which is the aggregate of all such charitable contributions paid for such year by all the members of the group.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8294, 55 FR 9438, Mar. 14, 1990; T.D. 8319, 55 FR 49038, Nov. 26, 1990; T.D. 8364, 56 FR 47402, Sept. 19, 1991; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33324, 33325, 33334, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

§ 1.1502-80 Applicability of other provisions of law.

(a) *In general.* The Internal Revenue Code, or other law, shall be applicable to the group to the extent the regulations do not exclude its application. Thus, for example, in a transaction to which section 381(a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply for any consolidated year. Section 304 applies except as provided in paragraph (b) of this section.

(b) *Non-applicability of section 304.* Section 304 does not apply to any acquisition of stock of a corporation in an intercompany transaction or to any intercompany item from such transaction occurring on or after July 24, 1991.

(c) *Deferral of section 165.* For consolidated return years beginning on or after January 1, 1995, stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii). See §§ 1.1502-11(c) and 1.1502-35T for additional rules relating to stock loss.

(d) *Non-applicability of section 357(c)*—

(1) *In general.* Section 357(c) does not apply to any transaction to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies, if it occurs in a consolidated return year beginning on or after January 1, 1995. For example, P, S, and T are members of a consolidated group, P owns all of the stock of S and T with bases of \$30 and \$20, respectively, S has a \$30 basis in its assets and \$40 of liabilities, and S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)); section 357(c) does not